



## **Agricultural Marketing Service**

### **7 CFR Part 993**

**[Doc. No. AMS-SC-22-0053]**

#### **Dried Prunes Produced in California; Increased Assessment Rate**

**AGENCY:** Agricultural Marketing Service, Department of Agriculture (USDA).

**ACTION:** Final Rule.

**SUMMARY:** This rule implements a recommendation from the Prune Marketing Committee (Committee) to increase the assessment rate established for the 2022-23 crop year. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]

**FOR FURTHER INFORMATION CONTACT:** Jeremy Sasselli, Marketing Specialist, or Gary Olson, Chief, Western Region Field Office, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487-5901, or Email: [Jeremy.Sasselli@usda.gov](mailto:Jeremy.Sasselli@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, or Email: [Richard.Lower@usda.gov](mailto:Richard.Lower@usda.gov).

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Agreement No. 110 and Marketing Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in California. Part 993 (referred to as the “Order”) is effective under the Agricultural Marketing

Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the “Act.” The Committee locally administers the Order and is comprised of producers and handlers of dried prunes operating within the area of production, and one public member.

The Agricultural Marketing Service (AMS) is issuing this final rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This final rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this final rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, California prune handlers are subject to assessments. Funds to administer the Order are derived from such assessments. The assessment rate is applicable to all assessable dried prunes for the 2022-23 crop year and will continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject

to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Order provides authority for the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

This final rule increases the assessment rate from \$0.28 per ton of assessed dried prunes, the rate that was established for the 2020-21 and subsequent crop years, to \$0.33 per ton of assessed dried prunes for the 2022-23 and subsequent crop years.

The Committee met on June 28, 2022, and unanimously recommended 2022-23 crop year expenditures of \$26,700 and an assessment rate of \$0.33 per ton of assessed dried prunes to fund administrative expenses. In comparison, last year's budgeted expenditures were \$26,212. The assessment rate of \$0.33 per ton is \$0.05 higher than the rate currently in effect. The Committee projects handler receipts of 75,000 tons of assessable dried prunes from the 2022-23 crop year, which is the same level that was projected for the 2021-22 crop year.

Dried prunes harvested in 2022 will be marketed over the course of the 2022-23 crop year, which begins on August 1, 2022. The expected 75,000 tons of assessable dried prunes from the 2022 crop should generate \$24,750 in assessment revenue. The \$1,950 balance of funds needed to cover budgeted expenditures will come from funds carried over from the previous crop year. The 2022-23 crop year assessment rate increase will be adequate, along with carryover funds, to cover 2022-23 crop year budgeted expenditures.

The crop year is a 12-month period that begins on August 1 of each year and ends on July 31 of the following year. The Committee expects that 2022-23 crop year production will be 75,000 tons of assessable fruit. The Committee used the projected 75,000-ton production estimate in determining its assessment rate recommendation for the 2022-23 crop year.

The major expenditures recommended by the Committee for the 2022-23 crop year include \$14,935 for personnel costs, \$11,125 for operating expenses, and \$640 for reserve for contingencies. Budgeted expenditures for the 2021-22 crop year were \$14,025, \$12,000, and \$187, respectively.

The Committee derived the recommended assessment rate by considering anticipated crop year expenses, actual prune tonnage received by handlers during the 2021-2022 crop year, and the anticipated funds that will be carried over into the new crop year. Income derived from handler assessments and the balance carried over from the previous crop year is expected to be adequate to cover budgeted expenses. The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment

rate. The dates and times of Committee meetings are available from the Committee or AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's budget for subsequent crop years would be reviewed and, as appropriate, approved by AMS.

### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 600 producers of dried prunes in the production area and 27 handlers subject to regulation under the Order. The SBA threshold for producers and handlers changed after the publication of the proposed rule. Thus, AMS changed the thresholds to reflect the new SBA thresholds in this final rule. The changes do not impact AMS's ultimate determination regarding the impact of the rule on small entities. Small agricultural producers of prunes are defined by the Small Business Administration (SBA) as those having annual receipts less than \$3,500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$34,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the average producer price for California dried prunes for the 2021 crop was \$2,000 per ton. NASS further reported 2021 crop year production for California dried prunes was 74,000 tons. The estimated total 2021-22 crop year value of California dried prunes is \$148,000,000 (74,000 tons times \$2,000 per ton equals \$148,000,000). Dividing the estimated total crop value by the estimated number of producers (600) yields an estimated average receipt per producer of \$246,667, which is considerably lower than the \$3,500,000 SBA small agricultural producer threshold.

In addition, according to USDA Market News data, the reported average terminal market price for 2021 for California dried prunes was \$38.93 per carton. Dividing the average carton price by the 28-pound carton size yields an estimated price per pound of \$1.39 (\$38.93 average price divided by 28 pounds). Multiplying \$1.39 per pound by 2,000 pounds yields \$2,780 per ton, which, when multiplied by total estimated 2021 production of 74,000 tons, yields estimated total handler receipts of \$205,720,000. Dividing this figure by the 27 regulated handlers yields estimated average annual handler receipts of \$7,619,259, well below the \$34 million SBA threshold for small agricultural service firms. Therefore, using the above data, the majority of producers and handlers of California dried prunes may be classified as small entities.

This final rule increases the assessment rate collected from handlers for the 2022-23 and subsequent crop years from \$0.28 to \$0.33 per ton of assessable dried prunes. The Committee unanimously recommended 2022-23 crop year expenditures of \$26,700 and an assessment rate of \$0.33 per ton. The assessment rate of \$0.33 is \$.05 higher than the assessment rate currently established. The Committee expects the industry to handle 75,000 tons during the 2022-23 crop year. Income derived from the \$0.33 per ton assessment rate, along with funds carried over from the previous crop year, should be adequate to meet the 2022-23 crop year's budgeted expenditures. The Committee

expects \$1,950 to be carried over into the 2022-23 crop year, which begins August 1, 2022.

The major expenditures recommended by the Committee for the 2022-23 crop year include \$14,935 for personnel costs, \$11,125 for operating expenses, and \$640 for contingency reserve. Budgeted expenses for these items during the 2021-22 crop year were \$14,025 for personnel costs, \$12,000 for operating expenses, and \$187 for contingency reserve. The Committee deliberated the budget categories and decreased their budget for office supplies and expenses to account for the 2022-23 crop year being a non-election year, therefore requiring fewer office supplies. Overall, the 2022-23 crop year budget of \$26,700 is \$488 more than the \$26,212 budgeted for the 2021-22 crop year.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources including the Committee's Executive, Marketing, Inspection, and Research subcommittees. Alternate expenditure levels were discussed by these groups, based upon the relative value of various projects to the dried prune industry and the expected dried prune production. The assessment rate of \$0.33 per ton of assessable dried prunes was derived by considering anticipated expenses, the projected volume of assessable dried prunes, the current monetary balance expected to be carried into the upcoming crop year, and additional pertinent factors.

A review of NASS information indicates that the average producer price for the 2021-22 crop year was \$2,000 per ton and the estimated quantity of assessable dried prunes harvested in the 2021-22 crop year is 74,000 tons, which yields a total estimated producer revenue of \$148,000,000 (\$2,000 multiplied by 74,000 tons). Therefore, utilizing the increased assessment rate of \$.33 per ton, assessment revenue for the 2021-22 crop year, as a percentage of total producer revenue, will be approximately 1.65 percent ( $\$0.33 \text{ multiplied by } 74,000 \text{ tons divided by } \$148,000,000 \text{ multiplied by } 100$ ).

This final rule increases the assessment obligation imposed on handlers.

Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the production area. The dried prune industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the June 28, 2022, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. In addition, interested persons were invited to submit comments on the proposed rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178 Vegetable and Specialty Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule would not impose any additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.



A proposed rule concerning this action was published in the **Federal Register** on November 7, 2022 (87 FR 66958). Copies of the proposed rule were also mailed or sent via email to all handlers of prunes produced in California. The proposal was made available through the internet by AMS and <https://www.regulations.gov>. A 30-day comment period ending December 7, 2022, was provided for interested persons to respond to the proposal. One comment in favor of the proposal was received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

#### **List of Subjects in 7 CFR Part 993**

Marketing agreements, Plum, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

#### **PART 993- DRIED PRUNES PRODUCED IN CALIFORNIA**

1. The authority citation for part 993 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

2. Section 993.347 is revised to read as follows:

#### **§ 993.347 Assessment rate.**

On and after August 1, 2022, an assessment rate of \$0.33 per ton of salable dried prunes is established for California dried prunes.

**Erin Morris,**

*Associate Administrator,  
Agricultural Marketing Service.*

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